



SUPPLY OF SERVICES CONTRACT

Dated:

BETWEEN

(**Customer**); incorporated and registered in England and Wales with company number (Reg Number) whose registered office is (Address) (the "**Customer**"); and

BLACKBOX COMPANY (UK) LIMITED incorporated in and registered in England and Wales with company number 08250305 whose registered office is at 42-46 Obelisk Way, Camberley, Surrey GU15 3SG (the "**Supplier**"),

the Customer and the Supplier together the "**parties**" and each a "**party**".

BACKGROUND

- 1 The Customer provides leadership and support to passenger, freight and network operators in the UK rail sector in order to promote and implement improved cross-industry initiatives.
- 2 The Supplier is a leading supplier of customer information systems to train operating companies in the UK.
- 3 The Customer wishes to engage the Supplier to provide the Services subject to, and on the terms of, this Contract. This Contract shall be governed by the terms set out below, and any additional documents and schedules referred to herein.

MAIN TERMS

1 STRUCTURE

- 1.1 The Applicable Terms set out in Schedule 1 to this Contract are incorporated into and form part of this Contract, as varied and amended by these Main Terms. The Supplier agrees that it shall provide the Services in accordance with the Applicable Terms and these Main Terms.

2 SERVICES

- 2.1 The detailed specification of the Services to be provided by the Supplier to the Customer are set out below:

Description of Services

As described in Appendix 1 (Specification).

Specification for the Services



As set out in Appendix 1 (Specification), as may be amended or updated by the parties from time to time by agreement in writing.

3 INSURANCES

3.1 The Supplier shall maintain the following insurances in accordance with clause 18 of the Applicable Terms:

- (a) professional indemnity insurance in an amount not less than £10 million for any one occurrence or series of occurrences consequent upon one event or original cause;
- (b) third party liability insurance in respect of the death of or personal injury to any person (other than the Supplier's own employees) and loss of or damage to any property of any person in an amount not less than £10 million for any one occurrence or series of occurrences consequent upon one event or original cause; and
- (c) any other insurances required by law.

4 SUPPLIER AND CUSTOMER CONTACT

Director the ("**Customer Contact**").

Commercial Director the ("**Supplier Contact**").

By signing this document, you agree to be bound by the terms set out in this Contract.

SIGNED FOR AND ON BEHALF OF THE **SUPPLIER**

Signature:

Print Name:

Position:

Date:

SIGNED FOR AND ON BEHALF OF THE **CUSTOMER**



Signature:

Print Name:

Position:

Date:



Schedule 1

Applicable Terms

1 INTERPRETATION

Acceptance: Customer's written notice to the Supplier stating that the Services perform in accordance with Specifications.

Acceptance Tests: the project plan in Appendix 3 (Acceptance Tests).

Applicable Laws: the law of England and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services.

Applicable Standards: all rules, regulations, recommendations, guidance and standards, including codes of practice and conduct, which have the force of law or with which it is generally accepted in the rail industry in the UK is good practice to comply or have been issued by a Competent Authority.

Applicable Terms: these terms and conditions as amended from time to time in accordance with clause 2.3.

Charges: the sum payable by the Customer for the Services, as set out in Appendix 3 (Charges).

CIS System: means the customer information system supplied by the Supplier and used by UK train operating companies.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: the date means the date of signature on this Contract from the countersigning party, on which date this Contract shall come into existence.

Commission: following Acceptance, incorporate the Software into the CIS System in use by the Supplier's customers.

Competent Authority: any worldwide body or agency which has the power under a legislative, judicial, regulatory or administrative role to directly enforce directions, instructions, rulings, laws or regulations against either of the Parties in connection with the performance of this Contract (including, without limitation, the ORR).

Confidential Information: information disclosed to the receiving party or which it obtains in relation to the other party which is of a confidential nature, including all technical or commercial know-how, specifications, inventions, processes, trade secrets, business affairs, initiatives, data or Passenger Data and the terms of this Contract.

Contract: the Main Terms and the Applicable Terms which form the contract between the Customer and the Supplier for the supply of the Services.



Customer Contact: the person detailed in the Main Terms or such other person as the Customer may notify to the Supplier from time to time.

Customer Materials: all materials, equipment, tools, drawings, specifications or data provided by the Customer as part of performing this Contract.

Data Services: means the data exchanges enabled by the System, as detailed in the Specification.

Documentation: the documents provided by the Supplier for the Services, in either printed text or machine readable form, including the technical documentation, specification and operations and maintenance manuals.

Insolvency Event: in respect of any party to this Contract (each a "person" for the purposes of this definition):

- (a) an order is made or resolution is passed for (or any other formal step is taken with a view to commencing) the administration, winding up, bankruptcy or dissolution of that person (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by the parties);
- (a) if a voluntary arrangement under section 1 of the Insolvency Act 1986 (as amended) is made in respect of that person (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by the parties);
- (b) if that person makes any arrangement or composition with its creditors generally (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by the parties);
- (c) if any distress, execution, sequestration or other process is levied or enforced or sued out or upon or against the whole or any material part of the assets of that person and the same is not discharged within 5 Business Days;
- (d) if any encumbrancer takes possession or an administrative or other receiver or manager is appointed of the whole or any material part of the assets of that person and is not removed or discharged within 5 Business Days in any such case; or
- (e) if that person is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

Intellectual Property Rights or IPR: all universal registered or unregistered intellectual property rights, including know how, patents, rights to inventions and designs, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, database rights, rights to use and protect confidentiality.



Main Terms: the commercial terms set out on the front of these Applicable Terms.

Network Rail: Network Rail Infrastructure Limited (company number 02904587) or any successor in title to any relevant railway facility or network.

ORR: the Office of Rail and Road or any successor to any part of its statutory regulatory functions.

Project Plan: the project plan in Appendix 2 (Project Plan), which shall include but not be limited to delivery dates and instructions, and relevant milestones.

Purchase Order: an order for Services made by the Customer to the Supplier in writing.

Secretary of State: the Secretary of State for Transport, whose principal address is at 33 Horseferry Road, London SW1P 4DR.

Services: the services listed in the Main Terms.

Software: the software to be provided as part of the Services and as specified in the Services description in paragraph 2.1 of the Main Terms.

Software Licence: has the meaning given to the term in clause 7.3.

Specification: the detailed specification for the Services described in the Main Terms.

Supplier Contact: the person appointed by the Supplier from time to time in order to fulfil the role described in clause 9.1 and detailed in the Main Terms.

Supplier Personnel: any and all individuals engaged in the provision of the Services from time to time, whether employed or engaged by the Supplier or any other person who the Supplier manages for the purposes of this Contract including the Supplier Contact.

Term: means the period starting on the Commencement Date and ending on Acceptance.

Third Party Service: a third party data service or third party software component mandated or procured by the Customer and integrated into the CIS System or downstream Data Service.

- 1.2 Defined terms used in this Contract that are not included in this clause 1 shall have the meanings given in the Main Terms.
- 1.3 Reference to a party includes its successors or permitted assigns.
- 1.4 Headings are for convenience only and do not affect interpretation.
- 1.5 Reference to a statute, statutory provision, rule or regulations, including codes of practice and conduct, is also reference to any update, amendment or subordinate or re-enacted legislation made under it.



1.6 Any phrase including the words **including, include, in particular** or similar expression shall mean those items as a non-exhaustive list and without limitation.

1.7 Reference to **in writing** or **written** includes e-mails but not fax.

2 BASIS OF CONTRACT

2.1 The Supplier shall supply the Services in accordance with the Project Plan or as otherwise may be agreed between the Parties..

2.2 In the event of a conflict, the order of precedence shall be as follows:

- (a) Main Terms;
- (b) Applicable Terms; and
- (c) any Appendix, Purchase Order, quotation, offer or acknowledgements expressly incorporated into this Contract.

2.3 No variation of this Contract, including the introduction of any additional terms and conditions unless agreed in writing by both Parties.

3 PERFORMANCE OF THE CONTRACT

3.1 The Supplier will procure that the Supplier Personnel are competent in accordance with Applicable Standards and will perform this Contract in accordance with the care and skill expected of an appropriately skilled and experienced supplier of services engaged in the same type of undertaking and seeking to comply with its contractual obligations.

3.2 The Supplier shall comply with all Applicable Laws and the Applicable Standards. In supplying the Services, the Supplier will not knowingly do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.

3.3 The Supplier shall ensure that at all times it has and maintains (at its cost) all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under this Contract.

3.4 The Supplier shall maintain complete and accurate records of its work in connection with its performance of this Contract for 3 years or any longer limitation period provided for by Applicable Laws.

4 SUPPLY OF SERVICES

4.1 Services must correspond with the Specification.

4.2 The Supplier shall perform the Services on the terms of this Contract and:



- (a) with reasonable care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (b) in accordance with the applicable Project Plan and Specification; and
- (c) in compliance with Applicable Laws.

Ancillary materials

- 4.3 Any Customer Materials shall be held by the Supplier in safe custody at its own risk, and maintained in good condition until returned to the Customer. The Supplier may not dispose or use Customer Materials other than for the proper performance of this Contract and in accordance with the Customer's written instructions or authorisation.

5 DELIVERY AND PERFORMANCE

- 5.1 The Supplier shall use its reasonable endeavours to meet the timescales set out in the Project Plan, provided that the Supplier shall have the right to request an extension so such timescales where the Customer shall have failed to comply in all material respects with its obligations under this Contract and the Customer shall not unreasonably refuse such a request.

6 TESTING AND ACCEPTANCE

- 6.1 Within 5 Business Days of Software completing the Acceptance Tests, the Customer (acting reasonably) shall inform the Supplier of their Acceptance. The Customer shall do so if the Software:

- (a) pass the Acceptance Tests;
- (b) comply with the Specification; and
- (c) Commission of the Software;

((a) – (c) above being the "**Preconditions**").

- 6.2 If one or more of the Preconditions are not met, the Customer shall provide the Supplier with reasonable particulars of the applicable non-compliance ("**Non-Compliance Notice**") and the Supplier shall immediately rectify such non-compliance and shall re-tender the Software for Acceptance in accordance with the provisions of clause 6.1 as soon as is reasonably practicable and in any event not later than 20 Business Days after the date of the Non-Compliance Notice. For the avoidance of doubt, the Customer shall be under no obligation to confirm Acceptance until each of the Preconditions has been met.

- 6.3 Acceptance of the SaaS shall be deemed to have occurred on whichever is the earliest of:

- (a) written confirmation by the Customer of Acceptance; or



- (b) the expiry of 21 days after the completion of all the Acceptance Tests, unless the Customer has issued a Non-Compliance Notice under clause 6.2.

7 LICENCES RIGHTS OF USE AND INTELLECTUAL PROPERTY

- 7.1 All Intellectual Property Rights shall remain vested in the party that owns them. This Contract performs no transfer or assignment of Intellectual Property Rights in favour of the other party.
- 7.2 The Customer grants to the Supplier, or shall procure the direct grant to the Supplier of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Term to use the Customer's Intellectual Property Rights for the purpose of supplying the Services, in each case, pursuant to the terms of this Contract.

Software

- 7.3 In consideration of the Charges, the Supplier will grant its current and future CIS System customers a non-exclusive, non-transferable, non-sublicensable licence to use the Software (the "**Software Licence**").
- 7.4 The Customer will not have any right to load, execute, copy, distribute, create derivative works from, sublicense or otherwise enjoy, derive benefit from or exploit the Software, or permit any other person to do so, and all of the Supplier's rights in the Software are fully reserved.
- 7.5 As a particular condition of the Software Licence granted in clause 7.3, the Customer will not reverse engineer, disassemble, decompile or translate the Software, or otherwise attempt to derive the source code of the Software, except to the extent explicitly allowed under applicable mandatory law without possibility of contractual waiver.
- 7.6 The Customer shall not:
 - (a) access all or any part of the Software in order to build a product or service which competes with the Software;
 - (b) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party; or
 - (c) attempt to obtain, or assist third parties in obtaining, access to the Software (other than for the purposes of performing the Customer's obligations under this Contract).
- 7.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify the Supplier.

8 WARRANTIES

- 8.1 With respect to the Software, the Supplier warrants that:



- (a) it has the right:
 - (i) to make the Software available as part of the applicable Service; and
 - (ii) to grant the Software Licence,and the provision of the Software as part of the applicable Service, and rights granted to use the Software, shall not infringe the rights of any third party; and
- (b) it will use its reasonable endeavours to ensure that the Software, will be free from viruses and other malicious code;

9 SUPPLIER CONTACT AND PERSONNEL

- 9.1 The Supplier shall appoint a qualified Supplier Contact who shall be responsible for the co-ordination of all matters relating to the Services. All communications, documentation and materials relating to the Services shall be sent as appropriate by the Supplier Contact to the Customer Contact. Each party shall notify the other in writing promptly if there is any proposed change to those appointments.
- 9.2 The Supplier shall, and shall procure that the Supplier Personnel shall, comply with all reasonable standards of safety and comply with the Customer's health and safety procedures from time to time in force at the relevant premises and report to the Customer any unsafe working conditions or practices. The Supplier shall ensure that the Supplier Personnel will comply with the following clauses of this Contract: 13 (Confidentiality) and 14 (Legal Compliance).

10 TUPE

- 10.1 The Parties do not envisage TUPE applying to this Contract.
- 10.2 Should TUPE apply, the parties shall act in accordance with their statutory obligations.

11 COMPLIANCE WITH CONTRACTUAL OBLIGATIONS

- 11.1 The Supplier shall maintain and operate an ethical trading policy in respect of any subcontracting and outsourcing of the manufacture of the equipment supplied as a part of or incidental to the performance of the Agreement.
- 11.2 The Supplier shall procure that any of its suppliers or subcontractors comply at all times in the manufacture of the equipment with the local national laws or regulations applicable to such suppliers or sub-contractors in respect of child labour. In any event the Supplier will not and will procure that any of its suppliers or sub-contractors will not employ any person below the age of 14 in the manufacture of the equipment.



- 11.3 The Supplier will ensure that its suppliers or subcontractors do not use forced labour in any form in the manufacture of the equipment. For the purpose of the Agreement "forced labour" includes all forms of slavery or practices similar to slavery, serfdom or compulsory labour.

12 PAYMENTS

- 12.1 In consideration for the supply by the Supplier of the Services, the Customer shall pay to the Supplier the Charges.
- 12.2 The Customer shall pay each invoice for the Charges within thirty (30) days of receipt.
- 12.3 All amounts payable under this Contract shall be deemed to be exclusive of VAT. The parties shall, on receipt of a valid VAT invoice, pay such additional amounts in respect of VAT as are chargeable on the supply of the Services.
- 12.4 If a party fails to make any payment due to the other party under this Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.
- 12.5 If a dispute arises in relation to all or any element of an amount payable by a party under this Agreement, that party shall pay the undisputed part in accordance with this Agreement.

13 CONFIDENTIALITY

- 13.1 Each party shall keep secret the Confidential Information. '
- 13.2 Either party may disclose such Confidential Information as is required to be disclosed by Applicable Laws or a Competent Authority. The Customer may disclose any Confidential Information as is required by the Secretary of State, ORR or Network Rail. The Customer may disclose Confidential Information to an assignee of this Contract.
- 13.3 The Supplier shall only disclose the Customer's Confidential Information to Supplier Personnel or subcontractors to the extent required to discharge the Supplier's obligations under this Contract, and shall ensure compliance by such Supplier Personnel or subcontractors with the obligations in this clause as though they were a party to this Contract.

14 LEGAL COMPLIANCE

- 14.1 The Supplier shall enforce its own anti-bribery policy and any policy or code made available to it by the Customer or released by ORR including anti-corruption, drugs and alcohol, anti-discrimination or health and safety.



- 14.2 The Supplier shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if carried out in the UK.
- 14.3 The Supplier will promptly report to the Customer any request or demand for any undue financial or other advantage of any kind it receives in connection with this Contract.
- 14.4 The Supplier shall ensure all Supplier Personnel or subcontractors providing services in connection with this Contract comply with this clause 14, and the Supplier shall be directly liable to the Customer for any breach by such persons.

15 INDEMNITY

- 15.1 The Supplier shall keep the Customer, its directors, employees, officers and agents indemnified against all claims, liabilities, costs, expenses, damages and losses (including professional costs and expenses) suffered or incurred by the Customer to the extent that they are attributable to the acts or omissions of the Supplier, the Supplier Personnel, or the Supplier's agents or subcontractors arising from or in connection with:
- (a) death, personal injury or damage to property or the Premises; and
 - (b) actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Services.

16 TERMINATION

Termination at will

- 16.1 The Customer may terminate this Contract, in whole or in part, by giving the Supplier not less than 6 months' written notice.

Termination for default

- 16.2 Either party (the "**First Party**") may terminate this Contract with immediate effect by giving written notice to the other party (the "**Second Party**") if:
- (a) the Second Party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (b) the Second Party repeatedly breaches any term of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or
 - (c) an Insolvency Event occurs in relation to the Second Party.
- 16.3 Termination shall not affect any existing payment obligations under clause 12.



General

- 16.4 The Customer may exercise any rights of termination arising under this Contract in respect of part or all of this Contract and where a partial termination arises this Contract shall continue in respect of the remaining supply of Services (as applicable).
- 16.5 Termination of this Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at the date of termination.
- 16.6 On termination of this Contract for any reason and on the request of the Customer, the Supplier shall immediately deliver to the Customer all Deliverables and other elements of work in progress for which the Customer has paid in accordance with clause 12, whether or not then complete, and return all Customer Materials without further charge and in the format stipulated by the Customer. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 16.7 If any term of this Contract in whole or part is declared ineffective under the Utilities Contracts Regulations 2015, this Contract shall be treated as terminated with immediate effect.

17 DATA PROTECTION

- 17.1 Terms and expressions defined in the Data Protection Act 1998 ("**DPA**"), which are used in this clause, shall have the meanings given to them in the DPA.
- 17.2 The Supplier agrees that it shall and shall procure that the Supplier Personnel and its agents and sub-contractors shall, comply with the provisions of the DPA and not by any act or omission put the Customer in breach of the DPA.
- 17.3 The Supplier shall ensure no technical data acquired from the Customer is exported in breach of any Applicable Law relating to export control, to any country which requires an export license or other governmental approval without first obtaining such license or approval.
- 17.4 If, during the Term, data protection laws change, and such change requires amendments to this Contract in order to enable one of both the parties to achieve compliance with those data protection laws, the parties, acting reasonably, will meet and agree appropriate amendments as necessary to achieve that compliance. Each party will bear its own costs in so doing.

18 INSURANCE

- 18.1 During the Term of this Contract (or any longer limitation period provided for by Applicable Law) the Supplier shall maintain in force, with a reputable insurance company the insurances as listed on the Main Terms (the "**Insurances**").



18.2 Each policy of insurance forming the Insurances shall:

- (a) have a deductible of not more than £1,000 per claim;
- (b) provide that such insurance shall continue unaltered for the benefit of the Customer for at least thirty (30) days after written notice by recorded delivery to the Customer's address (as last notified to the insurers) of (i) any cancellation, change or modification which materially affects the interests of the Customer, or (ii) lapse by reason of non-payment of premium or instalment or otherwise, has been received by the Customer.

18.3 On the Customer's request, the Supplier will produce both the insurance certificate(s) giving details of cover and the receipt for the current year's premium in respect of the Insurances.

18.4 If the Supplier fails to procure or maintain the Insurances, the Customer may procure insurances on behalf of the Supplier at the Supplier's expense which it shall be entitled to recover as a debt.

19 FORCE MAJEURE

19.1 If either party (the "**Affected Party**") shall be prevented from performing its obligations, issuing instructions or otherwise progressing this Contract by reason of any circumstances beyond its control including an act of God, war, civil commotion, fire, flood, drought, failure of power supply, lock-out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute ("**Force Majeure Event**"), the Affected Party shall be relieved from performing its obligations, issuing instructions or otherwise progressing this Contract, in each case for the period in which the Force Majeure Event persists. Promptly upon becoming aware of a Force Majeure Event, the Affected Party shall notify the other party ("**Non-Affected Party**") in writing that the provisions of this clause 19.1 shall apply and shall thereafter keep the Non-Affected Party properly informed of any material developments in respect of that Force Majeure Event. If a Force Majeure Event occurs and is continuing for more than 28 days, the Non-Affected Party may terminate this Contract.

20 CLAIMS ALLOCATION AND HANDLING AGREEMENT

20.1 This clause 20 applies where a claim, which arises out of or is connected with this Contract, is made by a third party who does not have a contract with the Supplier:

- (a) against the Customer or the Registrar which may result in a claim being made against the Supplier; or
- (b) against the Supplier which may result in a claim being made against the Customer or the Registrar (whether by the Supplier or otherwise), but does not apply where the Supplier admits that it is liable and that no railway industry party is liable in which case the Supplier itself may defend the claim.



- 20.2 The Supplier irrevocably appoints the Customer as its agent (in consultation where necessary with railway industry parties and their insurers) to defend or agree to arrangements for defence of such a claim in accordance with the railway industry Claims Allocation and Handling Agreement. In relation to such a claim the Supplier shall be bound by the terms of that agreement as if it were a party to it.
- 20.3 Where such a claim results in a payment to the third party, the Supplier agrees that liability for such payment and the costs of handling and defending the claim shall be allocated in accordance with the railway industry Claims Allocation and Handling Agreement. In the event of any dispute, the Supplier agrees to participate in the procedure for allocating liability set out in the Railway Industry Dispute Resolution Rules and to be bound by the result as if it were a party to the same.
- 20.4 Provided that clauses 20.2 and 20.3 above shall not apply to any claim in respect of which the Supplier admits that it is liable and that no railway industry party is liable. In such a case the Supplier itself may defend the claim.

21 DISPUTES

- 21.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("**Dispute**") then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the relevant member of each party with the day to day management, responsibility or oversight of this Framework Agreement and the relationship created hereunder (the "**Contract Managers**") shall attempt in good faith to resolve the Dispute;
 - (b) if the Contract Managers are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director of the Customer and the Managing Director (or equivalent) of the Supplier, (the "**Principals**") who shall attempt in good faith to resolve it;
 - (c) if the Principals are for any reason unable to resolve the Dispute within 30 days of it being referred to them, either party may refer the Dispute to be finally resolved by the courts of England in accordance with clause 23.12 of this Contract.

22 LIABILITY

- 22.1 This clause 22 sets out the Supplier's entire liability to the Customer under or in connection with this Contract.



- 22.2 The Supplier shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 22.3 The Customer acknowledges and accepts that:
- (a) the provision of the Services is partially dependent on Third Party Services;
 - (b) the Supplier is only able to provide the Services to the extent that it receives such Third Party Services; and
 - (c) the Supplier shall have no liability to the Customer for any breach of this Contract to the extent that it is caused by the failure of any Third Party Service.
- 22.4 Nothing in this Contract limits or excludes the Supplier's liability for:
- (a) death or personal injury caused by its negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 22.5 Subject to clause 22.4, the Supplier will not have any liability to the Supplier under or in connection with this Contract for any:
- (a) loss of profits or account of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of opportunity;
 - (e) loss of anticipated savings;
 - (f) loss of or damage to goodwill;
 - (g) loss of use or corruption of data or information; or
 - (h) any indirect or consequential loss.
- 22.6 Subject to clauses 22.4 and 22.5, the Supplier's total liability to the Customer under or in connection with this Contract (including for liability for defects in the Services) will be limited, in respect of all claims (connected or unconnected) to an amount equal to the fees paid by the Customer.



23 GENERAL

- 23.1 The following clauses will survive termination of this Contract: 1 (Interpretation), 3.4 (Records), 7 (Licenses and Intellectual Property), 8 (Warranties), 10 (TUPE), 13 (Confidentiality), 15 (Indemnity), 18 (Insurance), 20 (Claims Allocation and Handling Agreement), 21 (Disputes), 23.1, 23.5, 23.6, 23.7, 23.8 and 23.12 (General).
- 23.2 Each party shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Contract.
- 23.3 The Supplier may only assign or novate this Contract with the prior written consent of the Customer. The Supplier shall be liable for the actions and omissions of its assignee or sub-contractors as if they were its own.
- 23.4 If any term of this Contract in whole or part is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary. Failing modification, the relevant term shall be deemed deleted and this Contract shall otherwise remain valid and enforceable.
- 23.5 No right provided by law or obligation or term of this Contract shall be waived by either party unless recorded in signed writing.
- 23.6 This Contract does not establish any partnership or joint venture between the parties. Save as set out in clause 20, neither party has authority to act as agent for, or to bind, the other party in any way.
- 23.7 No term of this Agreement shall be enforced by any third parties under the Contracts (Rights of Third Parties) Act 1999.
- 23.8 This Contract sets out the entire agreement between the parties in relation to the supply of the Services. The parties acknowledge that they have not entered into this Contract in reliance upon any statement, representation, assurance or warranty which is not set out in this Contract. Nothing in this clause shall limit or exclude any liability for fraud.
- 23.9 Any notice or other communication given to a party under or in connection with this Contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email, to the following email address with a reference to this Contract in the subject line:

Supplier

Deleted: Customer: 1



23.10 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
- (c) if sent by email, at 9.00 am on the next Business Day after transmission.

23.11 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

23.12 This Contract and any non-contractual obligations in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).



Appendix 1

The Software will enable the delivery of the Azzido Customer Information Service

Appendix 2

Project/Delivery Plan



Appendix 3

Acceptance Tests

The Supplier shall carry out all reasonable tests to ensure that the Software is in operable condition and is capable of meeting the requirements of the Specification.

The Acceptance Tests shall be agreed between the Parties prior to the Project Start Date and will be such as are reasonably required to show that the Software complies with the Specification. The parties shall use best endeavours to agree the Acceptance Tests for the Software within 30 days from Commencement Date and in any event prior to the Project Start Date.

The Customer shall give the Supplier at least 24 hours' notice of the start of the Acceptance Tests and permit the other party to observe all or any part of the testing.

If the Software fails to pass the Acceptance Tests, the Supplier shall remedy the defects and deficiencies which caused the failure and the relevant test(s) shall be repeated within a reasonable time and in any event no later than 21 days after the initial failure.



Charges

Refer to Framework